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Hauser v. State Appellant's Reply Brief Dckt. 42788

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IN THE SUPREME COURT OF THE STATE OF IDAHO

JOSHUA V. HAUSER,)	
)	
Petitioner-Appellant,)	Supreme Court No. 42788
)	
vs.)	
)	
STATE OF IDAHO,)	REPLY BRIEF OF
)	APPELLANT
)	
)	
Respondent-Respondent.)	
_____)	

Appeal from the District Court of the Second Judicial District for Latah County

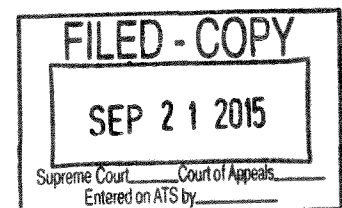
The Honorable John R. Stegner, District Judge, presiding.

THOMAS M. VASSEUR
Attorney at Law
409 Coeur d'Alene Avenue
Coeur d'Alene, ID 83814
(208) 667-4457
ISB # 1327

Attorney for Appellant

CHERYL A. EMMONS-MEADE
Deputy Attorney General
Idaho State Police
700 S. Stratford Drive
Meridian, ID 83642
(208) 884-7050
ISB# 6200

Attorney for Respondent



I. The statute is clear and unambiguous, and must be interpreted as written:

In February, 1996 the Appellant, then 19 years old, plead guilty to a violation of Idaho Code Section 18-1507A. Idaho Code Section 18-8304, which enumerates the crimes requiring sex offender registration, does not list Idaho Code Section 18-1507A as an offense requiring registration. That statute was repealed in 2012 and simultaneously struck from Section 8304. Effective July 1, 2012, Mr. Hauser was no longer required to register under the SORA.

“When interpreting a statute, the Court begins with the literal words of the statute, and where the language of a statute is plain and unambiguous, the court gives effect to the statute as written, without engaging in statutory construction.” *Boyd-Davis v. Maccomber Law, PLLC.*, 157 Idaho 949, 952 (2015).

The Court below, and the State on appeal, argues that this is an “absurd” result, contending that Section 1507A, even though repealed, survives within Section 1507 and that Mr. Hauser is still subject to the SORA. This violates the first principle of statutory construction, is not supported by a review of the legislation, and is contrary to the format of Section 8304.

The repeal of Section 1507A, and its elimination from Section 8304, was enacted by the 2012 legislature. 2012 Sess. Laws ch. 269 (effective July 1, 2012) [Senate Bill 1337]. In its Statement of Purpose, the only pertinent references to Section 18-1507A and Section 8304 are as follows: “REPEALING SECTION 18-1507A, IDAHO CODE, RELATING TO POSSESSION OF SEXUALLY EXPLOITATIVE MATERIAL FOR OTHER THAN A COMMERCIAL PURPOSE; AMENDING SECTION 18-8304, IDAHO CODE, TO REMOVE A CODE REFERENCE AND TO MAKE A TECHNICAL CORRECTION....” The legislative history of SB 1337, at least the legislative history counsel was able to find, does not even mention, let alone

discuss or debate, Section 1507A and its repeal, nor, more importantly, the decision to strike Section 18-1507A from Section 8304.

The format of Section 8304 also dictates that the result argued by the State be rejected. The legislature, in enacting Section 8304, did not list the offense by a “name”, or by a generic group, such as “rape, sodomy, lewd conduct with a minor child, sexual exploitation of a minor child, or possession of child pornography.” The legislature in enacting Section 8304, listed the offense by specific reference to the Idaho Code. The State would have the Court re-write Section 8304, by concluding that Section 1507A, even though repealed and now stricken from Section 8304, has now somehow been incorporated into Section 1507 as an offense to be known as “possession of child pornography”. This would constitute judicial legislation, and not within the power or role of the Court under our constitutional system of government.

The statute is plain and unambiguous. If the legislature intended for registration for those formally convicted under Section 1507A to continue, it could have simply repealed the statute without striking it from Section 8304. It did not do so, and Appellant's obligation to register under the Act ended with the enactment of Chapter 269 of the 2012 legislature.

II. The term “victim” is defined under Idaho law, not the law of other jurisdictions:

The term “victim” is defined by Idaho law, not federal law or the law of other states. Our Constitution directed the legislature to define victim (IDAHO CONST., Art. I, Section 22. The legislature did so in Section 19-5306(5)(a). A victim is an “individual who suffers direct or threatened physical, financial or emotional harm as the result of the commission of a crime or juvenile offense.” *State v. Hansen*, 156 Idaho 169, 174 (2014). Thus, there is no need to consult federal law or the law of other jurisdictions to define the term.

The term is further limited by the context and focus of the inquiry. Was the offense the Appellant plead guilty to an “aggravated offense” under Idaho Code Section 18-8303 because “at the time of the commission of the offense the victim was below the age of thirteen....”?

The Information the Defendant admitted to did not identify, by name or initial, nor by age, any victim. A child can be anyone under the age of 18, and that was the only factual allegation in the charge. The only support for the trial Court's finding was the assertion from the State that “some” of the images appeared to be of children under 13. None were ever identified, either by name or initial. There was no evidence that anyone had suffered “direct harm as a result of the commission of [the] crime.” *State v. Payne*, 146 Idaho 548, 575 (2008). Absent such evidence, the Court erred in concluding this was an “aggravated offense.”

III. The State is not entitled to attorney's fees on appeal:

“As a general rule, attorney fees are not awarded on appeal except pursuant to 'a statute or contractual provision authorizing an award of attorney fees on appeal. *Ticor Title Co. v. Stanion*, 144 Idaho 119, 127 (2007).” *International Real Estate Solutions, Inc., v. Arave*, 157 Idaho 816, 822 (2014).

The statute advanced by the State is Idaho Code Section 12-117 (2015 Supp.), which requires the State be the “prevailing party” and also requires a finding that the “non prevailing party acted without a reasonable basis in fact or law.”

Whether the State will be the prevailing party or not will have to await the Court's decision, but the law and facts of this case, and the argument advanced by Appellant, preclude a finding that he “acted without a reasonable basis in fact of law.” The State's request for attorney fees should therefore be denied.

Dated this 16 day of September, 2015.

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THOMAS M. VASSUER
Attorney for Appellant

Certificate of Service

I hereby certify that on the 16 day of September, 2015, two copies of the foregoing were served upon counsel for Respondent by mailing the same, postage pre-paid, to Cherly A. Emmons-Meade, Deputy Attorney General, Idaho State Police, 700 S. Stratford Dr., Meridian, ID 83642.

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THOMAS M. VASSEUR
Attorney for Appellant